court below struck the answer from the files, and entered a decree for the sale of the property. In reversing the judgment and setting aside the sale of the property, the Supreme Court of the United States, in part said: 'In our judgment the district court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files. As we are unanimous in this conclusion, our opinion will be confined to that subject. The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and answer could have no locus standi in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. * * * Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is clear that he is liable to be sued, and this carries with it the right to use all the means and appliances of defense.'

"In the subsequent case of Windsor *v.* McVeigh, 93 U. S. 274, 23 L. Ed. 914, involving the title to the same property, the case of McVeigh *v.* United States, supra, was cited, and the above principle therein announced was approved in the following language: 'Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations.'

"In the still later case of Hovey *v.* Elliott, 167 U. S. 409, 17 Sup. Ct. 841, 42 L. Ed. 215, the Supreme Court of the United States cited the McVeigh Case, and, after discussing at length numerous authorities, strongly approved its statement of the doctrine in question.

"In Buford *v.* Speed, 11 Bush, 338, we held that (quoting from the syllabus): 'The provision of the Federal Constitution, declaring that "no person shall be deprived of life, liberty, or property without due process of law," is applicable to alien enemies, and gives them the right, when proceeded against by legal process, to appear in person or by counsel, whom they have a right to employ, and to introduce evidence and make defense; and, further, that "where a husband left his wife in possession of his property and joined the Confederate Army, and proceedings to confiscate his property were instituted in the Federal court under the act of Congress, the wife had authority, by implication of law, to employ the ordinary means of making defense, by hiring and contracting to pay counsel, and he is bound by her action, whether she had express authority or not."' "

Constitutional Law—Referendum of Amendment to Federal Constitution.—In State *v.* Howell, 181 Pac. 920, the Supreme Court of Washington, held that under a state constitutional provision for referendum of "acts, bills, or laws," a joint resolution of the state leg-

islature ratifying the national prohibition amendment is subject to referendum, the amendment to the Federal Constitution being a law within such provision.

The court said in part: "It is well known that the power of the referendum was asserted not because the people had a willful or perverse desire to exercise the legislative function directly, but because they had become impressed with a profound conviction that the Legislature had ceased to be responsive to the popular will. They endeavored to, and did—unless we attach ourselves to words, and words alone, reject the idea upon which the referendum is founded, and blind ourselves to the great political movement that culminated in the Seventh Amendment—make reservation of the power to refer every act of the Legislature, with only certain enumerated exceptions.

"Guided by these considerations, we are satisfied that the people used the words 'act, bill or law' in no restricted sense, but in a sense commensurate with the political evil they sought to cure.

"And why should not the amendment be a law within the meaning of the Seventh Amendment? No reason is assigned other than that 'law' as there used is synonymous with 'bill' or 'act.' We may well argue, and be within sound rules, that if the people had so intended they would not have used the word 'law' at all, as was done in the state of Oregon. We can conceive of no more sweeping law than the proposed amendment. Certainly no amendment has ever been proposed that goes deeper into the vitals of the American idea of government. It surrenders pro tanto the sovereignty of the state, gives to the federal government a right to enact laws and to enforce them through the federal courts, and it will deny the citizen the protection of some of those guaranties that we have written out of the travail of time into our own Bill of Rights. Upon construction we hold that the amendment to the Constitution of the United States is a law within the meaning of the Seventh Amendment, and is subject to referendum.

"But it is contended that, whereas the Legislature ratified the amendment by joint resolution instead of by act or bill, as it might have done, the resolution, being not eo nomine an act, bill, or law, is not subject to a referendum. This argument defeats itself, for if we are to be literal and exact in terminology, and so insistent upon 'scholastic interpretation' as to admit this premise, we must hold that the Legislature had no power to ratify the amendment except by act or bill; for we find no power granted in the Constitution to that body to act in matters legislative other than by act or bill.

"This reasoning would lead to two consequences, equally absurd: Either the amendment being ratified by resolution, the act of ratification is void as a thing done in a manner not provided; or, if sustained, would permit the Legislature to defeat the power of referen-

dum by acting, in matters purely legislative, by resolution instead of by bill. The latter is the consequence in the instant case if the argument of the learned Attorney General is to be sustained. But we are not put to the extremity of holding that the Legislature may not in matters of ratification act by resolution, for there is a high road of reason leading down to a true result.

"The contention that a resolution, although it may have the force and consequence of a formal legislative enactment, and affect the people in their civil and political rights, cannot be referred, arises from a misconception of the term. This case sounds in fundamentals, not in definitions. It is not the resolution, but the act of the Legislature in adopting it, that is to be referred. A resolution, like all acts of the Legislature, is to be measured by the end accomplished. It is true that we have no provision in our Constitution providing for the passage of resolution even in the formal matters in which the Legislature has throughout the entire history of our territory and state, been wont to act, but it is just as evident that there is no limitation upon the power of the Legislature to act by resolution.

"The Constitutions of some of the states and the Constitution of the United States (section 7, art. 1) permit or recognize the practice of acting by resolution, and some of them limit its uses. It has been held if the Constitution is silent, as ours is, that legislation cannot be effected by that method. Boyers *v.* Crane, 1 W. Va. 176; State ex rel. Attorney General *v.* Kinney, 56 Ohio St. 721, 47 N. E. 569; Barry *v.* Viall, 12 R. I. 18.

"And were we considering a matter involving private right, arising in or out of the laws of this state, we could not question the authorities just cited; but they are not applicable for the reason that the authority to act in the matter of a proposed amendment to the Constitution of the United States does not arise in or out of the Constitution of the state, but arises out of the federal Constitution, and any act, whether it be by resolution or by bill, on the part of the state Legislature must be held to be a sufficient expression of the legislative will, unless Congress itself challenges the method or manner of its adoption. It is upon this principle that the Supreme Court of the United States has held that the question whether the referendum does violence to the Constitution of the United States is nonjusticiable, holding that the question whether it deprives the government of a state of its representative character, thus violating the guaranty of a republican form of government, is a question for Congress, and not for the courts."

Homicide—Manslaughter—Reckless Driving of Automobile.—In Held *v.* Commonwealth, 208 S. W. 772, the Court of Appeals of Kentucky affirmed a conviction of manslaughter of the accused whose